

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

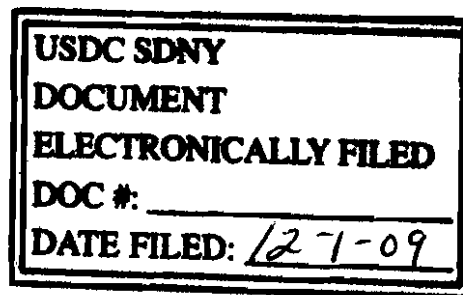
-----X  
JOHN RIZZI,

Petitioner,

-against-

SUPERINTENDENT PAYANT,

Respondent.  
-----X



08 Civ. 5287 (PKC)(KNF)

ORDER ADOPTING REPORT  
AND RECOMMENDATION

P. KEVIN CASTEL, District Judge:

The petition for a writ of habeas corpus was referred to Magistrate Judge Kevin N. Fox for a report and recommendation. On October 15, 2009, Magistrate Judge Fox issued a Report and Recommendation ("R & R") recommending that the petition be denied. See Rizzi v. Payant, No. 08 Civ. 5287 (PKC)(KNF), 2009 WL 3353026 (S.D.N.Y. Oct. 15, 2009).

The R & R advised the parties that they had ten days from service of the R & R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object and would preclude appellate review. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The R & R expressly called the parties' attention to Rule 72(b), Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). Petitioner received clear notice of the consequences of the failure to object and has waived the right to object to the R & R or obtain appellate review. Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992). Upon a review of the well-reasoned R & R, this Court finds no circumstances which would cause this Court to depart from that rule in the interest of justice. Id.

The R & R is adopted in its entirety and the petition is DENIED. The Clerk shall enter judgment for the respondent.

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The Court will not issue a certificate of appealability because petitioner's failure to object to the R & R precludes appellate review. Frank, 968 F.2d at 300; 28 U.S.C. § 2253. The Court certifies that any appeal from this order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Kevin Castel', written over a horizontal line.

P. Kevin Castel  
United States District Judge

Dated: New York, New York  
November 30, 2009